

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0721-05E</b>
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For use by Office of Administrative Law (OAL) only

2010 JUL 21 PM 4:37

OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
Bureau of Automotive Repair/Department of Consumer AffairsAGENCY FILE NUMBER (if any)  
2010\_215**1. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**3. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

a. SUBJECT OF REGULATION(S) Enhanced Fleet Modernization Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3394.7
	AMEND 3394.4, 3394.5 and 3394.6
	REPEAL
TITLE(S) 6	

TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs, title 1, §44 and Gov. Code §11347.1)

EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>Upon Appr. of OAL File # 2010-0504-02s</u>
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CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

CONTACT PERSON Steven Hall	TELEPHONE NUMBER (916) 255-2135	FAX NUMBER (Optional) (916) 255-1369	E-MAIL ADDRESS (Optional) steven_hall@dca.ca.gov
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I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE, OR AGENCY HEAD OR DESIGNEE

DATE

Typed Name and Title of Signatory  
Brian J. Stieger, Director, Department of Consumer Affairs

For use by Office of Administrative Law (OAL) only

BUREAU OF AUTOMOTIVE REPAIR

SPECIFIC LANGUAGE OF PROPOSED REGULATIONS

ENHANCED FLEET MODERNIZATION PROGRAM

Legend: Deleted text is indicated by ~~striketrough~~.

Added text is indicated by underlining.

Omitted text is indicated by (\* \* \* \*).

(1) Amend Section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

**§ 3394.4. Eligibility Requirements.**

(a) In order to participate in the Consumer Assistance Program, a person must meet the following requirements, as applicable:

(1) Be the registered owner of an eligible vehicle who has paid all appropriate registration fees for the vehicle with the Department of Motor Vehicles.

(2) Under a Repair Assistance option which is based on a person's income level:

(A) i. Until December 31, 2008, have a household income that is less than or equal to two hundred twenty-five percent (225%) of the federal Poverty Guidelines, as published by the United States Department of Health and Human Services;

~~ii. Beginning January 1, 2009, have a household income that is less than or equal to one hundred eighty-five percent (185%) of the federal Poverty Guidelines, as published by the United States Department of Health and Human Services; and~~

(B) Spend a minimum co-payment of twenty dollars (\$20) on emissions-related repairs at a licensed smog check test-and-repair station. Money spent to correct tampered emissions control systems or to make a vehicle testable shall not be included in the co-payment.

(3) Under a Repair Assistance option which is based on a person's vehicle being directed to a Test-Only station to have its smog check inspection, as indicated on the Department of Motor Vehicles renewal notice, spend a minimum co-payment of one hundred dollars (\$100) on emissions-related repairs at a licensed smog check test-and-repair station. Money spent to correct tampered emissions control systems or to make a vehicle testable shall not be included in the co-payment.

(4) Under the Vehicle Retirement option:

(A) ~~Obtain a Revivable Junk Receipt from the Department of Motor Vehicles after receiving written confirmation from the Bureau of Automotive Repair on program eligibility;~~

(B) Not have retired another vehicle through the Smog Check Consumer Assistance Program within a preceding twelve-(12) month period; and

~~(C)~~(B) A vehicle owner who is a joint owner of a vehicle may not sell more than two (2) vehicles to the Consumer Assistance Program within a twelve-(12) month period.

(b) In order to qualify for participation in any option of the Consumer Assistance Program, a vehicle must be a motor vehicle that is required biennially to obtain a certificate of compliance pursuant to Section 44011 of the Health and Safety Code and has failed a biennial smog check inspection, as required pursuant to subdivision (a) of Section 44011.

(c) In order to qualify for participation in the Vehicle Retirement option of the Consumer Assistance Program, at the time of application, a vehicle must:

(1) Be currently registered with the Department of Motor Vehicles; or,

(2) Be currently operating under a repair cost waiver or economic hardship extension issued by the Bureau of Automotive Repair; or,

(3) Be currently operating under a Temporary Operating Permit issued by the Department of Motor Vehicles; or,

(4)(A) ~~Until June 30, 2009, not have a registration that has been expired for more than one hundred eighty (180) days after the date the application is postmarked;~~

~~(B)~~Beginning July 1, 2009, not have a registration that has been expired for more than one hundred twenty (120) days after the date the application is postmarked; and

(5)(A) Have been continuously registered as an operable vehicle with the Department of Motor Vehicles for the twenty-four (24) months immediately preceding the current registration expiration date; and or

(B) Vehicle is placed in non-operational status pursuant to Vehicle Code Section 4604, et seq., for a total of 60 or fewer days for the 24 months immediately preceding the registration expiration date; or

(C) Vehicle registration has lapsed for less than 121 days for the 24 months immediately preceding the registration expiration date.

~~(6)(A) Until June 30, 2009, have failed a biennial smog check inspection no later than one hundred eighty (180) days after the expiration of the vehicle's most current renewal of registration with the Department of Motor Vehicles, provided that the registration renewal date is not more than one hundred eighty (180) days prior to the postmarked date on the application, and that the failure is for causes other than an ignition timing adjustment, a failed gas cap functional test, or a non-emission related failure identified by the malfunction indicator light;~~

~~(B) Beginning July 1, 2009, have failed a biennial smog check inspection no later than one hundred twenty (120) days after the expiration of the vehicle's most current renewal of registration with the Department of Motor Vehicles, provided that the registration renewal date is not more than one hundred twenty (120) days prior to the postmarked date on the application, and that the failure is for causes other than an ignition timing adjustment, or a failed gas cap functional test, or a non-emission related failure identified by the malfunction indicator light; and~~

~~(7) Be a passenger vehicle, or light-duty truck, sports utility vehicle (SUV) or van, with a gross vehicle weight rating of 8,500 10,000 pounds or less; and~~

\* \* \* \*

Note: Authority cited: Sections 44001.3, 44001.5 and 44002, Health and Safety Code; and Section 9882, Business and Professions Code.  
Reference: Sections 44005, 44010.5, 44011, 44012, 44014.7, 44015, 44017, 44017.1, 44037.1, 44062.1, 44091, 44092, 44093, 44094 and 44095, Health and Safety Code.

(2) Amend Section 3394.5 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows.

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### **§ 3394.5. Ineligible Vehicles**

(a) The following vehicles are not eligible for participation in the Repair Assistance and Vehicle Retirement options of the Consumer Assistance Program:

- (1) A vehicle undergoing a transfer of ownership.
- (2) A vehicle being initially registered in California.
- (3) A direct import vehicle being initially registered in California.
- (4) A vehicle powered by alternate fuel, unless a Bureau Referee label is posted on the vehicle.
- (5) A specially constructed vehicle, unless a Bureau Referee label is posted on the vehicle.

(6) A dismantled or total loss salvaged vehicle that has not been re-registered pursuant to Section 11519 of the Vehicle Code.

(7) A vehicle operated by a fleet licensed and registered pursuant to Section 44020 of the Health and Safety Code.

(8) A vehicle registered to a non-profit organization or a business.

(9) A vehicle that is untestable on a BAR-97 Emissions Inspection System (EIS).

(10) Under the Repair Assistance option, a vehicle with a tampered emissions control system.

(11) Under the Vehicle Retirement option, a vehicle with a tampered emissions control system where the tampered system is the cause for failing the smog check inspection.

Note: Authority cited: Sections 44000, 44001.3, 44001.5, 44002, 44091, 44092, 44093, 44094 and 44095, Health and Safety Code. Reference: Sections 44011, 44015, 44017, 44020, 44037.1, 44091, 44092, 44093, 44094 and 44095, Health and Safety Code; and Section 11519, Vehicle Code.

(3) Amend Section 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

**§ 3394.6. Application and Documentation Requirements for the Consumer Assistance Program.**

(a) In order to participate in the Consumer Assistance Program, ~~an~~ the applicant must shall meet the requirements pursuant to 3394.4 et seq. and submit a completed application, PPD-08\_022 CAP/APP (0207/0810), which is hereby incorporated by reference, and required documentation to the Department or its designee with original signature(s).

(b) The application must include copies of the following documents, as applicable:

(1) Under the Repair Assistance option, copies of any invoices for emissions– related repairs performed prior to applying to the Consumer Assistance Program, for the sole purpose of crediting the consumer co-payment required under section 3394.4.

(2) Under the Repair Assistance option, if applying based on income level, an applicant must ~~provide show proof of household income by providing a copy of~~ any one of the following documents:

(A) A letter from the issuing agency stating that the applicant receives any of the following benefits:

1. Supplemental Security Income (SSI);
2. State Supplemental Payments (SSP);
3. Temporary Assistance for Needy Families (TANF);
4. California Work Opportunity and Responsibility to Kids (CalWORKS);
5. General Assistance (GA) or General Relief (GR); or
6. Publicly subsidized medical coverage, such as or Medi-Cal; or
7. The applicant must show proof of household income by providing one of the following:

~~(B)~~(i) The applicant's state or federal income tax form (Form 540 or 1040) filed in the most recent tax year; or

~~(C)~~(ii) A paycheck stub reflecting year-to-date earnings, hours worked, and hourly wage of the applicant; or

~~(D)~~(iii) An unemployment, veterans benefits, or disability check issued to the applicant within the last sixty (60) days; or

~~(E)~~(iv) A monthly bank statement issued to the applicant within the last sixty (60) days reflecting direct deposit of Social Security or Public Assistance; or

~~(F)~~(v) Other documentation satisfactory to the Department.

Note: Authority cited: Sections 44001.5, 44002, 44091 and 44094, Health and Safety Code; and Section 9882, Business and Professions Code.  
Reference: Sections 44001.3, 44005, 44010.5, 44011, 44012, 44014, 44014.2, 44015, 44017, 44017.1, 44062.1, 44092, 44093, 44094 and 44095, Health and Safety Code.

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(4) Add Section 3394.7 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

**§ 3394.7. Application and Documentation Requirements for the Enhanced Fleet Modernization Program.**

In order to participate in the Enhanced Fleet Modernization Program, the applicant shall meet the requirements pursuant to Title 13, Chapter 13, Article 2, California Code of Regulations, submit a completed application, 08 022 CAP/APP (07/10), which is hereby incorporated by reference, and required documentation to the Department or its designee with original signature(s).

Note: Authority cited: Sections 44001.5, 44002, 44091 and 44094, Health and Safety Code; and Section 9882, Business and Professions Code.  
Reference: Sections 44001.3, 44005, 44010.5, 44011, 44012, 44014, 44014.2, 44015, 44017, 44017.1, 44062.1, 44092, 44093, 44094, 44095, 440125, and 44126, Health and Safety Code.

# Consumer Assistance Program Application

**Receive \$1,000 to retire your vehicle**

Para obtener una solicitud en español, llámenos al 800.952.5210.

Please fill out the application completely. Incomplete applications cannot be processed and may be returned.

## SECTION 1: Application selection (Check below)

- ☐ **Vehicle Retirement: (\$1,000)** - Complete Sections 2 and 3, read and sign Section 5.
- ☐ **Repair Assistance: Income Eligible (\$20 consumer co-pay)** - Complete Sections 2 through 4; read and sign Section 5. **You must submit a copy of one income document as outlined on page 2.**
- ☐ **Repair Assistance: Directed Vehicle (\$100 consumer co-pay)** - Complete Sections 2 and 3, read and sign Section 5. **Note: Directed Vehicle applicants may also qualify as Income Eligible if they meet income requirements.**

## SECTION 2: Registered Vehicle Owner Information

LAST NAME		FIRST NAME		M.I.	DRIVER LICENSE OR I.D. #	DATE OF BIRTH
MAILING ADDRESS	APT.	CITY	STATE	ZIP	DAYTIME PHONE #	

## SECTION 2A: Joint Registered Vehicle Owner Information (if applicable)

LAST NAME		FIRST NAME		M.I.	DRIVER LICENSE OR I.D. #	DATE OF BIRTH
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## SECTION 3: Vehicle Information

VEHICLE YEAR	MAKE	MODEL	VEHICLE IDENTIFICATION # (VIN)	CALIFORNIA LICENSE PLATE #
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### Consumer Co-pay

Do not obtain additional repairs prior to receiving approval to our program. If emissions-related repairs were recently done, you may be eligible to have the cost of those repairs credited toward your required co-payment for Repair Assistance. Submit copies of receipts for those repairs for verification. (A Smog Check inspection cannot be used to credit a consumer co-pay.)

## SECTION 4: Income Verification (Income Eligible Applicants Only)

CIRCLE THE NUMBER OF PEOPLE LIVING IN HOUSEHOLD (INCLUDE YOURSELF)

1   2   3   4   5   6   7   8   9+

PROVIDE A COPY OF ONE OF THE FOLLOWING AS PROOF OF HOUSEHOLD INCOME:

(See list of acceptable documents listed on page 2)

GROSS HOUSEHOLD INCOME \$ \_\_\_\_\_ ☐ MONTHLY ☐ YEARLY

### SOURCE OF DOCUMENTATION:

- |   |   |                                       |  |                                      |
|---|---|---------------------------------------|--|--------------------------------------|
| <input type="checkbox"/> Paycheck Stub    | <input type="checkbox"/> Federal or State Income Tax Form | <input type="checkbox"/> SSI          | <input type="checkbox"/> SSP               | <input type="checkbox"/> TANF        |
| <input type="checkbox"/> GR               | <input type="checkbox"/> GA                               | <input type="checkbox"/> Medi-Cal     | <input type="checkbox"/> Disability        | <input type="checkbox"/> CalWORKS    |
| <input type="checkbox"/> Social Security* | <input type="checkbox"/> Public Assistance*               | <input type="checkbox"/> Unemployment | <input type="checkbox"/> Veterans Benefits | <input type="checkbox"/> Other _____ |

\* Monthly bank statement reflecting direct deposit within the last 60 days is acceptable.

**Do NOT have emissions-related repairs performed on your vehicle until your application has been approved.  
The State does not have authority to reimburse consumers for repairs already performed.**

**Questions? Please call 866.272.9642**

**SECTION 4 (Continued): Income Verification (Acceptable documentation)**

If you are applying as an Income Eligible applicant, provide a copy of **one** of the following documents that verifies your income eligibility:

- A copy of your Federal (1040 Form) or State (540 Form) Income Tax Form from the most recent year.

**OR**

- A copy of a paycheck stub reflecting your year-to-date earnings, hours worked, and hourly wage.

**OR**

- A letter from the issuing agency stating that you receive one of these benefits:
  - Supplemental Security Income (SSI).
  - Temporary Assistance for Needy Families (TANF).
  - State Supplemental Payments (SSP).
  - California Work Opportunity and Responsibility to Kids (CalWORKs).
  - General Assistance (GA) or General Relief (GR).
  - Publicly subsidized medical coverage (Medi-Cal).

**OR**

- A copy of one of the following income verification documents:
  - An unemployment, veterans benefits, or disability check issued to you within the past 60 days.
  - A bank statement issued to you within the past 60 days reflecting a deposit of Social Security or Public Assistance funds.

**SECTION 5**

I acknowledge that the information provided on this application will be used to assess and verify my eligibility for assistance. My signature gives consent for this information to be shared with other government agencies. I declare, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information on this application is true and correct. I understand that submitting false information may result in a criminal conviction or in a civil penalty of not less than \$150 and not more than \$1,000, and that I will not be eligible to receive future assistance. I further understand and agree that if my vehicle does not meet all program requirements, it will not be permitted into the Consumer Assistance Program.

Registered Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Joint Registered Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PLEASE NOTE: Once the state-contracted Gold Shield station has initiated any CAP diagnostic or repair work on your vehicle, CAP will not change your eligibility status or associated co-payment.**

DEPARTMENT OF CONSUMER AFFAIRS



Bureau of Automotive Repair

**MAIL YOUR APPLICATION AND REQUIRED DOCUMENTS TO:**

**Bureau of Automotive Repair**  
Consumer Assistance Program  
10235 Systems Parkway, Suite D  
Sacramento, CA 95827



Pursuant to Section 1798.17 of the Civil Code (Information Practices Act), the Director of the Department of Consumer Affairs is responsible for maintaining the information in this application. Information may be transferred to other governmental agencies if required. Individuals have the right to review the records maintained on them by the agency, unless the records are exempted by Section 1798.40 of the Civil Code.



## Consumer Assistance Program (CAP) Options

### ☒ Vehicle Retirement – \$1,000 to retire your vehicle.

#### Vehicle Retirement Equipment and Operational Requirements

(Inspections will be performed on the items listed below at a CAP-contracted dismantler.)

##### Vehicle Equipment Requirements

- ☐ All doors
- ☐ Hood lid
- ☐ Dashboard
- ☐ Windshield
- ☐ At least one side window glass
- ☐ Driver's seat
- ☐ At least one bumper
- ☐ Exhaust system
- ☐ All side and/or quarter panels
- ☐ At least one headlight, one taillight, and one brake light

##### Vehicle Operational Requirements

- ☐ Vehicle must be driven to a CAP-contracted dismantler under its own power.
- ☐ Vehicle engine starts readily through ordinary means without the use of starting fluids or external booster batteries.
- ☐ Vehicle drivability is not affected by any body, steering, or suspension damage.
- ☐ Vehicle is able to drive forward a minimum distance of 10 yards under its own power.
- ☐ Interior pedals are operational.

### ☒ Repair Assistance – Receive up to \$500 in emissions-related repairs

You may qualify in one of two ways:

**Income Eligible:** Your household income is not more than the maximum amount shown in the "Income Eligibility Table" to the right. If you qualify, you must pay the first \$20 toward diagnosis and repair of your vehicle. The State will then contribute up to \$500 in emissions-related diagnostic and repair services performed by a Gold Shield station on your vehicle.

OR

**Directed Vehicle:** Your registration renewal notice directs your vehicle to a Test-Only or Gold Shield station for its Smog Check. If you qualify, you must pay the first \$100 toward diagnosis and repair of your vehicle. The State will then contribute up to \$500 in emissions-related diagnostic and repair services performed by a Gold Shield station on your vehicle.

**Income Eligibility Table\***

Number of People in Household*	Maximum ANNUAL Gross Household Income		Maximum MONTHLY Gross Household Income
1	\$24,368	OR	\$2,031
2	\$32,783	OR	\$2,732
3	\$41,198	OR	\$3,433
4	\$49,613	OR	\$4,134
5	\$58,028	OR	\$4,836
6	\$66,443	OR	\$5,537
7	\$74,858	OR	\$6,238
8	\$83,273	OR	\$6,939
For more than 8, add the following amount for each individual	\$8,415	OR	\$701

\* Household means all family members or other persons who reside together and share common living expenses. **BE SURE TO INCLUDE YOURSELF!**

**Your application must be approved before you can receive assistance.  
Financial assistance is based on the availability of funds.**

To learn more about vehicle maintenance, visit [www.drivehealthy.com](http://www.drivehealthy.com)

## ELIGIBILITY REQUIREMENTS

### To qualify for **VEHICLE RETIREMENT**, you must meet all of the following requirements:

- ☐ You must be the registered owner and not have retired a vehicle (a joint owner must not have retired two vehicles) through the Consumer Assistance Program (CAP) within the last 12 months.
- ☐ The vehicle must not be undergoing an initial registration in California.
- ☐ The vehicle must not be registered to a business, fleet or non-profit organization.
- ☐ The vehicle shall have a gross vehicle weight rating of no more than 10,000 pounds including a passenger vehicle, truck, sports utility vehicle (SUV) or van.
- ☐ The vehicle must pass a visual and operational inspection (see page 3).

#### AND

#### 1. If your vehicle requires a biennial Smog Check inspection:

- ☐ The vehicle must have failed a "biennial" (every other year) Smog Check inspection (aborted, manual mode, and training mode tests do not qualify).
- ☐ You must pay all appropriate fees for the vehicle with the Department of Motor Vehicles (DMV).
- ☐ The vehicle must not be undergoing a transfer of ownership.
- ☐ The Smog Check failure must not be due solely to an ignition timing adjustment, or a failed gas cap functional test.
- ☐ The vehicle must have failed a Smog Check inspection no later than 120 days after its registration expiration date.
- ☐ You must have applied no later than 120 days after the current registration expiration date of your vehicle.
- ☐ The vehicle must have been continuously registered as an operable vehicle in California for the 24 months immediately preceding the current registration expiration date; **or**
  - The vehicle was placed in non-operational status for a total of 60 or fewer days for the 24 months immediately preceding the current registration expiration date; **or**
  - The vehicle registration has lapsed for less than 121 days for the 24 months immediately preceding the current registration expiration date.

#### OR

#### 2. If your vehicle does not require or is not currently due for a biennial Smog Check inspection:

- ☐ All vehicles with a title that has been branded by the DMV as dismantled or salvaged are ineligible.
- ☐ The vehicle must be continuously registered as an operable vehicle in California for at least 24 months prior to the postmarked date of the application; **or**
  - The vehicle was placed in non-operational status for a total of 60 or fewer days during the continuous 24 month registration period and occurring at least 90 days prior to the postmarked date of application; **or**
  - The vehicle registration has lapsed for less than 121 days during the previous 24-month registration period, provided that the vehicle is registered for at least 90 days prior to the postmarked date of application.

#### OR

- ☐ The vehicle may be eligible if primarily driven in California for the last two years (not have been registered in any other state or country in the last two years). Documentation of operation in California includes the following:
  - Proof of insurance for the last two years; **or**
  - Invoice(s) (showing the vehicle identification number) for vehicle repairs and/or maintenance during the previous two years and proof of owner's residence in the State during the same period.

### To qualify for **REPAIR ASSISTANCE**, you must meet all of the following requirements:

- ☐ The vehicle must have failed a "biennial" (every other year) Smog Check inspection (aborted, manual mode, and training mode tests do not qualify).
- ☐ You must be the registered owner.
- ☐ You must pay all appropriate vehicle registration fees to the Department of Motor Vehicles.
- ☐ The vehicle must not have a tampered emissions control system.
- ☐ The vehicle must not be undergoing a transfer of ownership or an initial registration in California.
- ☐ The vehicle must not be registered to a business, fleet, or non-profit organization.

**Do NOT have emissions-related repairs performed on your vehicle until your application has been approved.  
The State does not have authority to reimburse consumers for repairs already performed.**

DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE

**STATEMENT OF EMERGENCY  
FOR ADOPTION OF REGULATIONS**

**Amend Title 16 California Code of Regulations, Sections 3393.4-3394.7.**

The Department of Consumer Affairs (DCA)/Bureau of Automotive Repair (BAR) hereby find that adoption of regulations on an emergency basis is required to implement the Enhanced Fleet Modernization Program (EFMP). The DCA specifically finds that these emergency regulations are necessary for the immediate preservation of public health and safety, and general welfare of the citizens of California.

**SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION**

The reduction of ozone pollution is among California's most urgent priorities. In its 2010 State Of The Air Report, the American Lung Association found that 17 of the most polluted counties in the nation were in California. This translates to highly toxic levels of pollution for approximately 34 million Californians. Years of studies have confirmed that mobile sources are responsible for approximately 40 percent of statewide greenhouse gas emissions and significant degradation to public health and environmental quality due to air and water pollution. To address this issue, the Legislature passed AB 118 (Nunez, Chapter 750, Statutes of 2007). This bill requires BAR to administer the EFMP to retire high-polluting vehicles commencing January 1, 2010. Since July 1, 2008, \$1 from vehicle registration fees has been deposited into the Enhanced Fleet Modernization Subaccount to retire these vehicles. These regulations would cause the immediate release of those funds and cause the state to uniformly and effectively address the environmental degradation facing California.

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**NEED FOR IMMEDIATE ACTION**

As written, AB 118 requires the Air Resources Board (ARB) to first adopt guidelines before BAR may commence the removal of high pollution vehicles from California's roads. BAR was therefore required to await the filing of ARB regulations before setting in place the procedures for the EFMP. After unforeseen delays, the ARB regulations have been re-submitted for approval. Adoption of the BAR EFMP regulations on an emergency basis is now required for immediate compliance with the statute. Immediate implementation of the EFMP is also critical to move California closer to becoming compliant with Federal clean air standards, and to avoid the loss of valuable Federal highway funds.

California depends heavily on Federal funding to build and maintain its highways. The ability to secure this funding depends, in part, on California meeting its emissions reduction goals. California has consistently fallen short in meeting its emissions targets. As a result, California is at serious risk of jeopardizing billions in Federal highway funds. The loss of Federal highway funds, in turn, substantially hurts California's economy. The harm to California is compounded by the correlation between well-maintained highways, the free flow of vehicles, and air quality. Poorly maintained highways minimize the ability of even newer vehicles to run efficiently.

Each year as many as 32,000 California residents die from breathing toxic particulate matter. Studies have consistently shown that the effect of air pollution includes increased mortality, increased respiratory illness, decreased lung function, lung inflammation, potential immunological changes, and decreased tolerance for exercise. This results in approximately 87 people dying each day because of elevated levels of emissions. For California this results in an additional 29,808 hospital and emergency room admissions from 2005 to 2007 and an additional \$193 million in avoidable costs. If state clean air standards had been met during this period, an estimated \$204 million in health care costs could have been avoided.

Evidence shows that vehicles 15 years old and older account for less than 15% of the miles traveled on California roads, while emitting 60% of the smog forming emissions. The EFMP is designed to remove these older high-polluting vehicles from California roads resulting in 1,710 tons of emissions removed from the air each year. Emergency implementation of the EFMP is necessary to not only save lives, but to preserve the public health, safety, and general welfare of all Californians, and to help California meet state and federal clean air standards. Adoption of these regulations would immediately begin the removal of high polluting vehicles from California roads. Each month of inaction costs Californians their lives.

#### **AUTHORITY AND REFERENCE:**

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44100, 44101, 44102, 44103, 44104, 44104.5, 44105, 44106, 44107, 44109, 44115, 44120, 44121, 44122, 44125 and 44126 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 11 of Chapter 1, Division 33, Title 16, California Code of Regulations.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

##### **INTRODUCTION:**

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs (DCA), is the state agency charged with the administration and implementation of the Smog Check Program (Program). It is designed to reduce emissions from mobile sources, such as passenger vehicles, SUVs, and trucks by requiring them to meet specific emissions standards.

##### **Section 3394.4-3394.7, Consumer Assistance Program**

The Bureau is also charged with the administration of Consumer Assistance Program (CAP), which provides financial assistance to qualified vehicle owners that wish to retire their vehicle. Health and Safety Code (HSC) §44125 and §44126 establishes the Enhanced Fleet Modernization Program (EFMP); participation in EFMP is limited to available funds. Distinct from CAP, the EFMP is available to vehicle owners who, if eligible, receive compensation to retire their high-polluting vehicles. Approved applicants must take their vehicle to an authorized dismantler where the vehicle must pass a visual and operational inspection before it is accepted for retirement.

## **FISCAL IMPACT ESTIMATES**

### **FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:**

The proposed Enhanced Fleet Modernization Program (EFMP) is a voluntary vehicle retirement program authorized pursuant to AB 118 (Nunez, Chapter 750, Statutes of 2007). The purpose of the legislation is to augment the State's existing vehicle retirement program. Funding for the program is provided through a \$1 increase in vehicle registration fees. BAR projects incurring \$12.125 million in fiscal year 2010-11 and \$14.4 million ongoing in direct costs associated with the retirement of eligible vehicles.

### **NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:**

None.

### **LOCAL MANDATE:**

None.

### **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:**

None.

### **BUSINESS IMPACT:**

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide-adverse-economic-impact-directly-affecting-business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

The Bureau will be updating regulations to incorporate the creation of EFMP. Since ARB has been charged with writing specific program requirements in consultation with BAR, there will be no adverse impacts to businesses in the state.

This proposed action will amend the CAP application to include EFMP. This regulatory action provides consumers easily understood directions when applying for CAP.

### **IMPACT ON JOBS/NEW BUSINESSES:**

The Bureau has determined that this regulatory proposal will not eliminate jobs or existing businesses in the State of California. Potentially, a small number of new jobs may be created due to the increase in vehicle retirement and the need for consumers to replace their vehicle.

Given the recent decline in the auto sales industry, the EFMP may help to maintain current employment levels as opposed to creating new jobs.

EFMP is a consumer driven program, which consumers will not participate in if it does not provide them with economic benefits. Owners of older, higher polluting vehicles will benefit due to expanded options for replacing their vehicle with a newer, cleaner vehicle. Owners of vehicles with little resale value that continue to be driven would receive a cash incentive as a result of EFMP. In turn, newer vehicles may be purchased as a result of the incentive received from retiring a vehicle. Individuals and businesses selling used vehicles may benefit slightly due to greater demand for resale vehicles.

### **COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:**

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, other than the Business Impact described above.

### **EFFECT ON HOUSING COSTS:**

None.

### **EFFECT ON SMALL BUSINESS:**

~~The Bureau has determined that the proposed regulations would not affect small businesses.~~

Requirements under this regulation do not mandate small business participation. The programs under EFMP are voluntary and may provide positive benefits to those businesses that wish to participate in the program.

### **AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

## **CONTACT PERSON**

**Inquiries or comments concerning the proposed administrative action may be addressed to:**

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## **WEB SITE ACCESS**

Materials regarding this proposal can also be found on the Bureau's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).